

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

HARRIETT REID, :
: Plaintiff, :
v. : : CIVIL ACTION
: FILE NO. _____
: Plaintiff, :
PUBLIX SUPER MARKETS, INC. :
: Defendant. :
:

PETITION FOR REMOVAL

TO: The Judges of the United States District Court, Northern District of Georgia
Defendant Publix Super Markets, Inc., (“Defendant”) respectfully shows the
Court as follows:

1.

A civil action has been brought against the Petitioner in the State Court of Cobb County, State of Georgia, by the above-named Plaintiff, said action being designated as Civil Action No. 22-A-3693 in which Plaintiff Harriett Reid has sued the Defendant Publix Super Markets, Inc. arising out of an alleged slip and fall incident that occurred in the Publix Super Market located at 5829 Campbellton Road SW, Atlanta, Georgia, Georgia, on September 28, 2021. Plaintiff filed the within

Complaint on November 1, 2022. The Defendant Answered on November 30, 2022.

2.

The Plaintiff is now, was at the time of the commencement of this action, and at all times since has been a citizen and resident of the State of Georgia.

3.

Defendant Publix Super Markets, Inc., is now, was at the time of the commencement of this lawsuit, and at all times since, a corporation organized and existing under the laws of the State of Florida, having its principal place of business in Lakeland, Florida.

4.

The parties have previously litigated this matter in the State Court of Coweta County. Defendant attaches copies of the following documents that were filed with the State Court of Coweta County:

Exhibit A Summons and Complaint;

Exhibit B Sheriff's Entry of Service for Publix Super Markets, Inc.;

Exhibit C Answer of Publix Super Markets, Inc.;

Exhibit D Demand for Twelve Person Jury;

Exhibit E Defendant Publix Super Markets, Inc.'s First Interrogatories to Plaintiff, First Request for Production of Documents to Plaintiff;

- Exhibit F Defendant Publix Super Markets, Inc.'s First Request for Admissions to Plaintiff and;
- Exhibit G Rule 5.2 Certificate of Service regarding Defendant Publix Super Markets, Inc.'s First Interrogatories, Request for Production of Documents and Request for Admissions to Plaintiff;
- Exhibit H Leave of Absence for James W. Hardee;
- Exhibit I Rule 5.2 Certificate of Service regarding Plaintiff's Responses to Defendant's First Interrogatories and Request for Production of Documents (and Pleadings).

5.

In the Plaintiff's discovery responses, the Plaintiff itemized medical bills in the amount of \$85,058.83, related to this occurrence.

6.

In the Complaint (Exhibit "A"), filed by the Plaintiff in the State Court of Cobb, Plaintiff Harriett Reid asserts that she was injured in a slip and fall incident that occurred at Publix Super Markets, Inc. In the Complaint, the Plaintiff requests special and general damages. In the Plaintiff's Complaint, there is no specific prayer for special, general, or punitive damages. The Plaintiff generally alleged damages in excess of \$70,000. The Defendant Publix Super Markets, Inc. served upon Plaintiff its First Request for Admissions, attached hereto as Exhibit "F".

7.

As of the date of filing the within Petition, the Plaintiff has wholly and completely failed to respond to Defendant Publix Super Markets, Inc.'s First Request for Admissions and as such, said Request for Admissions are deemed admitted, pursuant to Georgia law. The Request for Admissions were served on November 30, 2022. The responses were due on December 20, 2022. By going unanswered, pursuant to Georgia law, these Admissions specifically admit the amount in controversy, exclusive of interests and costs, in this matter exceeds \$75,000.00 and that the Plaintiff seeks to recover special and general damages in an amount greater than \$75,000.00. Again, the Plaintiff has itemized \$85,058.83 in her discovery responses. The Plaintiff relates these expenses to the alleged slip and fall occurring at Publix.

8.

Now, within twenty (20) days after Plaintiff's failure to respond to the Defendant's Request for Admissions, the Defendant removes this case to this Court pursuant to 28 U.S.C. § 1446(b) which permits a case to be removed if the case stated by the initial pleading is not removable, but the Defendant later receive other paper (which includes written discovery responses) from which it can be ascertained that the case is one which has become removable, then the Defendants may remove the

case to federal court on the basis of diversity jurisdiction provided by 28 U.S.C. § 1332, so long as not more than one-year has expired since the case was commenced on November 1, 2022.

Plaintiff Harriett Reid could have originally brought this action in this Court under 28 U.S.C. § 1332, in that it is a civil action wherein the amount in controversy exceeds seventy-five thousand dollars (\$75,000), exclusive of interest and cost, and there is diversity of citizenship between the parties.

9.

If a jurisdictional amount in controversy would have been stated specifically in the Plaintiff's Complaint, this action could have originally been brought in this Court under 28 U.S.C. § 1332, in that it is a civil action wherein the amount in controversy exceeds seventy-five thousand dollars (\$75,000), exclusive of interest and cost, and there is diversity of citizenship between the parties.

10.

Pursuant to 28 U.S.C. § 1441, et seq., and 28 U.S.C. § 1367, this action is now removable by reason of diversity of citizenship, there being more than \$75,000.00 in controversy, exclusive of interest and costs.

WHEREFORE, Defendant Publix Super Markets, Inc. files this Petition for

Removal of said cause to this Court.

Respectfully submitted this 11th day of January, 2023.

**FAIN, MAJOR & BRENNAN,
P.C.**

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/s/ James W. Hardee

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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LINDA TOLBERT, :
v. :
Plaintiff, : CIVIL ACTION
v. : FILE NO. _____
PUBLIX SUPER MARKETS, INC. :
Defendant. :

CERTIFICATE OF SERVICE

This is to certify that I have this date served upon counsel for the opposing parties in the foregoing matter a copy of the foregoing **Removal Petition** with the Clerk of Court using the CM/ECF system, which will automatically send e-mail notification of such filing to all attorneys of record as follows:

Anthony J. Herro
THE HERRO LAW FIRM
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This 11th January, 2023.

**FAIN, MAJOR & BRENNAN,
P.C.**

/s/ James W. Hardee

JAMES W. HARDEE

Georgia State Bar No. 324399

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